

## THE LEGISLATIVE ASSEMBLY.

## SPECIAL SESSION.

Thirty-second Day.

Monday, Dec. 12, 1887.

House met at 10 o'clock, the President, Hon. S. G. Wilder, in the Chair. Minutes of 31st day read and approved.

## PETITIONS.

Rep. Kawahau presented two petitions from Hana, praying, (1) that twenty years separation between man and wife shall constitute a divorce, (2) that a member of the Hui who has not paid his dues forfeit membership, (3) that government physicians be not allowed to charge fees, (4) that school teachers be not exempt from taxation, (5) that no laws against the sale of opium or liquor be passed, (6) that native doctors be allowed to practise medicine without license, (7) that Hawaiian women having ten children receive a present from the government, (8) that lepers be allowed to stay in their districts with their friends, (9) that an appropriation of \$10,000 be made for encouragement of agriculture. Noble Wilcox moved the petition be laid on the table. Carried.

## BILLS SIGNED.

Minister Brown announced the following acts signed by His Majesty: 1. To amend section 18, chapter 44, laws of 1882, as amended by chapter 3, laws of 1886, relating to the regulation of the sale of spirituous liquors. 2. To provide for a commission to report on the feasibility of bringing water into Hanalei.

3. To construe and declare the meaning of the terms "the King" and "the sovereign" in certain cases. 4. To repeal chapter 73, Session Laws of 1886, relating to the importation and sale of opium.

5. To amend section 44, laws of 1886, relating to the division of taxation, educational and judicial districts. 6. To repeal the acts prohibiting natives from leaving the islands.

7. An act supplementary to the Appropriation Bill.

Rep. Kalanika asked if these acts were countersigned by a Minister.

Minister Thurston said that was understood in the Cabinet to be the work of the Minister of Interior. He had not had time, as yet, to sign them, but it would be attended to in due order.

## REPORT OF COMMITTEE.

Noble Baldwin asked further time for the committee on the Chinese Immigration bill. Granted.

## RESOLUTION ON THE VETO.

Noble Castle moved the following: WHEREAS, It appears by the records of the Legislature of the 9th of December, 1887, that the message of His Majesty the King accompanying the bills and resolutions, whereby the royal assent was refused to the bills entitled respectively, "An Act to abolish the office of Governors" and "An Act to provide for the discharge of certain duties heretofore performed by the Governors," which said bills have been duly passed by the Legislature, is not countersigned by a Minister; and

WHEREAS, His Majesty's Ministers have stated to the Legislature that such message and the action based thereon were made without the advice and consent of the Cabinet; and

WHEREAS, It is a fundamental principle of the Constitution, and of the system of government based thereon, that the sovereign shall act in matters of state only through responsible Ministers, therefore be it

Resolved, That it is the sense of the Legislature that the Royal Assent has not been refused to the bills entitled respectively "An Act to Abolish the Office of Governor" and "An Act to Provide for the Discharge of Certain Duties Hitherto Performed by the Governors," according to the intent and meaning of the Constitution, and that said message and the action thereon based is of no effect, and be it further

Resolved, That said bills, with the message accompanying them, shall be and are hereby through the Cabinet forthwith referred back to His Majesty for such further or final action as may be necessary, and be it further

Resolved, That a committee of thirteen members of this Assembly be appointed to wait upon His Majesty with the Cabinet, and inform Him respectfully of the action of the Legislature in the premises.

The resolution was seconded by Noble Waterhouse.

Noble Baldwin moved the resolution be adopted. Seconded by Noble Dole.

Rep. Nakaleka moved indefinite postponement.

Noble Castle said: The issue presented is very grave and must be decided only after careful and exhaustive discussion and examination. It calls for a construction by the Legislature of the true intent and meaning of the Constitution. It is to be regretted that so many important matters have been brought forward at this session, when the Constitution is young, the Legislature inexperienced and the government hardly in full grasp of the reins of control under the new order of things. But have it as we would, the issue has arisen and must be decided.

The question is placed before us, and we must indicate what is our opinion, when the Constitution is young, the Legislature inexperienced and the government hardly in full grasp of the reins of control under the new order of things. But have it as we would, the issue has arisen and must be decided.

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rather than that of the United States of America. In the latter, no Cabinet, as of constitutional right, sits with and advises the Legislature or Congress. The Executive is not represented in any respect in the Legislative Department. In this country as in England the Cabinet forms a part of the Legislature and is responsible to it. Here the Cabinet is not elective, but our present fundamental law expressly makes it simply responsible to the House, and if not in accord, the King must remove them upon a vote of want of confidence. In England the Cabinet is composed of elective members of the Parliament, at least as to a portion of them. No Cabinet in the United States can be elected by the law-making power. Here and in the British Empire, the Cabinets are made and unmade by the Legislature.

The veto power is given by the constitutions of each of the United States to the Governors and by that of the Federal Union to the President. That power is frequently exercised. It can be overcome by a two-thirds vote of the Legislature, and if such veto cannot be obtained and the veto power is exercised contrary to public policy, the people simply wait for a short term until the expiration of the term of office of the President or Governor when another man is elected whose views are in accord with such policy. But no such relief can be had in a constitutional monarchy, the sovereign reigns till death ensues and in some senses this might be called forever. In England the veto power may be said to exist, as one of the prerogatives of the Crown, but it has not been exercised since 1707 during the reign of Queen Anne and in fact the power is obsolete. No sovereign of England would dare to nullify the act of the Parliament. It will not and cannot be done so long as the principle of responsible government, which is the basis of the modern Constitution, exists. It is for this that the country arose as one man in June last and compelled the recognition of these principles in the grant of the new Constitution.

Without a review of the growth of this principle of responsible government, we come to the question of what is the proper construction of our Constitution. Does it not appear to conflict in any of its clauses? The rule of construction must be so exercised as to give force to all of its points if possible. If this requires the limitation of any part, such limitation will be placed upon that part in order that it may have effect. If parts are totally repugnant, the clauses last in time and place will control. These laws are recognized in England and the United States and are admirably laid down in Cooley's Constitutional Limitations p. 71, etc. With these rules in view, we come to the act withholding assent to a bill by the King can be performed by and with the advice and consent of the Cabinet, and that without such advice and consent such act cannot be exercised without violence to the letter and spirit of the Constitution. If the King is to exercise without the advice and consent of the Cabinet, which is responsible, or contrary to such advice, render null the act of the Legislature, then we return to the condition from which we escaped in July last and all of our trouble returns to us again. If our Constitution means anything; if responsible government is not a delusion, if we gained anything by our new system, it is that the King acts by and with the advice and consent of the Cabinet, and for these reasons I introduced the resolution and advocate its passage.

Rep. Paeahole saw nothing in the Constitution requiring the King to act by the advice and consent of his Ministers. He was of opinion that the King had complied with the Constitution and that the Ministers were to blame.

Noble Widemann said the introduction of the resolution had evidently convinced him of the fact that his views were correct. He had failed to convince him, the speaker. The veto was a judicial act, Article 41 was intended for executive and not for judicial acts. This resolution is an uncertain solution of the question. When they get the Supreme Court decision, we shall have a full solution of the question.

Rep. Paeahole opposed the resolution.

Noble Townsend said: All political power comes from the people. This is the Anglo-Saxon idea. It is the idea which first developed into political liberty in England. It is the idea which animated the Revolutionary Fathers in America. It is the idea which led to the downfall of the despotism of the Bourbons of France. It is the idea which has been shaking all Europe periodically for generations. It is the idea which aroused untold enthusiasm in the greatest people's meeting ever held in these islands, on the 30th day of last June. This idea is prevailing and has been prevailing over all opposing ideas for ages. Sometimes it prevails quietly and sometimes with a tumult, as when an unwilling King signed the first great Charter of English liberty at Runnymede. In form King John granted this measure of liberty to the people. In reality he signed the Charter as he was presented to him, and that to save his throne, if he save his life in any day, he will not oppose the King (for their request was nothing less than a demand), "I (1) That he will not in the future interfere either directly or indirectly with the election of representatives. (2) That he will not interfere with or attempt to unduly influence legislative legislation. (3) That he will not interfere with the constitutional administration of his Cabinet." On the first day of July His Majesty answered the people, granting all that they asked. He consented also, specifically, to a new Constitution. And why did the people want a new Constitution? They wanted the principles which had been demanded so earnestly incorporated into the organic law of the land. We all remember what enthusiasm was displayed on that occasion. Even the most extravagant speeches were applauded and speeches were never before applauded in this land.

The Constitution was promised and the excitement subsided somewhat. But we remember with what deep interest all awaited the appearance of that document. It is an open secret that the work of framing the Constitution was given to some of our wisest and shrewdest men, to embody in it the principles which the people had contended for. And they did it. And it was eagerly that the people looked for the result of their work. I remember when the Constitution was first printed. I owned a copy of it and spread it out on the table, and read it through, eagerly looking to see if we had gained our point. I read on and was using little changes—some good, some doubtful. As I approached the end, my heart sank within me. At last I came to Article 75. It was a shock to me. We had it after all. I felt like the wag who read it through with complaints and maledictions till he came to Article 75, when he started up with the exclamation, "I didn't know it was to be done!" It was loaded, Mr. President, and it is loaded yet.

I looked back over the sections and read "The King consents the Legislature, etc." "The King consents the Legislature, etc." "The King consents the Legislature, etc." But I found Article 75 in different wording from all others. It reads, "It is the King's Prerogative to receive and acknowledge public Ministers; to inform the Legislature by royal message, from time to time, of the state of the Kingdom; and to recommend to its consideration such measures as he shall judge necessary and expedient." Here are three acts which are said to be the King's prerogative. Now prerogative simply means irresponsible power. These then are the powers for the exercise of which no one can be held responsible. These are the powers which the King is to exercise in Article 75. And it is the plain inference from this statement that other powers spoken of, are not prerogative.

Article 41 says, "The legislative power of the Kingdom is vested in the King and the Legislature, which shall consist of the No-

bles and Representatives sitting together." How comes it that the four great organs of the Kingdom sit opposite me and join in the actions of this House? Are they Nobles? Are they Representatives? No, they are the Cabinet. They have a right to sit in this House, under Article 42. Does Article 42, then, contradict Article 44, or does it explain it? It certainly does one or the other. I hold that it simply explains it. The Cabinetmen before me sit as representatives of His Majesty. It is through them that he exercises his legislative power. Again, Article 42 says "The Cabinet hold seats *ex officio*, in the Legislature, with the right to vote, except on a question of want of confidence in the Government. They are absolutely one of the class of questions then on which they may not vote, and that embraces questions of want of confidence in them, and nothing more. Yet Article 43 plainly implies that they may not vote on the passage of a bill without the Royal signature. The natural and necessary inference from this, is that the Cabinet is responsible for the exercise of the so-called veto power. If they exercise that power and the Legislature votes them down on it, two to one, then it is certainly time for them to step down and out. Article 75 explains how they can be held responsible for it is utterly unreasonable to hold any set of men responsible for acts not their own. "Wherever by the Constitution any Act is to be done or performed by the King or the Sovereign it shall, unless otherwise expressed, mean that such Act shall be done and performed by the Sovereign, by the advice and consent of his Cabinet." This is the key to the whole constitutional question, and I shall not discuss it further.

Mr. President, nearly all of us are representatives of those who took part in the movement of the 30th of June and the early days of July. Those who spoke so fervently and those who applauded so heartily at "the great mass meeting," and those who sustained the movement in other districts, are our constituents. To-day they demand of us that we maintain the principles which they have established. We must not prove false to our great trust. Only one thing more. Where political power is exercised the people will hold the person who exercises it responsible, no matter what a written constitution or written law may say about it. We had an illustration of this thing. The case of the President of the United States, could not be held accountable for his actions, was then and there called to account at the bar of public opinion. And whoever wields political power in this land, will be held responsible for it, either at the bar of this House, or in the courts of justice. We are all of us, therefore, responsible. We cannot have another 30th of June. The occurrences of those days will never be repeated. Any attempt in that line will bring about results disastrous in the extreme. We must guard against whatever looks toward such a thing. We are all of us, therefore, responsible. We cannot have another 30th of June. The occurrences of those days will never be repeated. Any attempt in that line will bring about results disastrous in the extreme. We must guard against whatever looks toward such a thing. We are all of us, therefore, responsible. We cannot have another 30th of June. The occurrences of those days will never be repeated. Any attempt in that line will bring about results disastrous in the extreme. We must guard against whatever looks toward such a thing. We are all of us, therefore, responsible. We cannot have another 30th of June. The occurrences of those days will never be repeated. 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